
THE NOTION AND ISSUES OF RESPONSIBILITY OF IMPROPER PERFORMANCE OF PROFESSIONAL DUTIES

Shukhratjon Jumaevich Khaydarov*; Kaustav Choudhoury**

*Associate Professor,
Doctor of Philosophy in Law (PhD),
Department of Criminal Law, Criminology and Anti-Corruption,
Tashkent State University of Law,
Tashkent City, UZBEKISTAN
Email Id: Xaydarovshuxrat@mail.ru

**Assistant Professor,
(Law) Rashtriya Raksha University,
(An Institution of National Importance),
Ministry of Home Affairs, Government of India,

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ABSTRACT

In the article the concept of improper performance of professional duties was analyzed on the basis of the opinions of scientists and materials of practice, as well as the problems of improper performance of professional duties were identified, substantiated proposals and recommendations on amendments and additions to the legislation to solve these problems were disclosed.

KEYWORDS: *Crime, profession, craft, task, obligation, duty, criminal liability, special rules, negligence, medical personnel, guilty, inaction.*

1. INTRODUCTION

Criminal law of the Republic of Uzbekistan adopted after independence, based on historical experience, has developed a universal norm with specific features, which imposes criminal liability for improper performance of their duties. This, in turn, is important given that all professionals are likely to be prosecuted if they fail to fulfill their responsibilities in criminal law.

In this regard, we believe that it is necessary to focus on the underlying notions of criminal liability for improper performance of their duties. The vocabulary of the Uzbek language states that “profession is a type of activity that requires certain experience, preparation; craft” [1]. “The task is to achieve the intended purpose or aimed function”. “Professional duties” means tasks that must be solved, depending on the individual’s function and profession duties.

It is important to clarify the relationship between duty and obligation, as it is of scientific and theoretical important to identify the differences between these concepts that are essentially mutually exclusive. In the explanatory dictionary of the Uzbek language, “commitment is an involuntary task, duty or obligation” [2]; The duty is that “obligation, fulfillment, and task” [3]. The duty is to fulfill the requirements established or recognized by society and the state and reflected in legal norms or ethical, educational rules and practices. Angle is largely driven by rules and ethics, and commitment often comes from contracts and agreements; the duty lasts from birth of a person to the end of his life, and the obligation is valid for the duration of the contract; it is also the duty of the state and society to fulfill it [4].

In applying Article 116 of the Criminal Code of the Republic of Uzbekistan, criminal liability for violation of professional duties and responsibilities may occur. Because duty is an ethical notion

of a person's obligation to a person, family, community, nation, homeland, and represents the complex mental state of a person's internal experiences, which cannot be controlled from the outside. Also, responsibilities are clear and limited, and may include military, parental, and child responsibilities. Failure to do so can result in criminal liability under the relevant criminal law, depending on the circumstances of the case.

It is also necessary to distinguish between professional duties and responsibilities. These two concepts are closely intertwined and differ according to the origin. Professional obligations usually arise on the basis of civil law contracts and agreements; the professional function is based on the employment contract within the specific professional activities of the individual. That is, a particular case is imposed on a person under a civil law contract, and his or her failure to perform his or her duty is violated, provided that Article 116 of the Criminal Code of the Republic of Uzbekistan has the consequences. In particular, if the kindergarten teacher is the subject of the offense under Article 116 of the Criminal Code of the Republic of Uzbekistan, he or she does not perform their professional duties properly and, as a result, the mother (person hired to look after the child in civil law) In the event of a consequence provided by law, liability under this Article shall arise. However, differentiating these concepts or examining their relationship has no effect on qualifying crime.

It is worth noting here that the notions of "job" and "position" (official) are different. Means "career, practice, responsibility, position" [5]. An official is called an official. In accordance with Section 8 of the of the Criminal Code of the Republic of Uzbekistan "Legal Meaning of the Terms", an official – appointed, approved or elected by a permanent, temporary or special authority, acting as a representative of the government or in government agencies, citizens" self-government, enterprises, institutions, organizations. a person authorized to carry out organizational, managerial, administrative and economic functions and to carry out legally significant actions, as well as in an international organization or State legislative, executive, administrative or judicial office of a person carrying out the official tasks.

Sometimes a socially dangerous act committed by an official coincides with the signs provided for in Article two and in some cases - Article three of the Criminal Code [6]. It should be noted that Article 116 of the Criminal Code does not fall under the authority of the official, but their actions are qualified by the articles of the Special Part of the Criminal Code [7].

In addition to the above, it is necessary to distinguish between the terms "law" or "special rules" used in the disposition of Part II of Article 116 of the Criminal Code. According to article 8 of the Law "On Normative-legal acts" adopted on 24 December 2012, "the laws of the Republic of Uzbekistan regulate the most important and stable social relations and are adopted by the Oliy Majlis of the Republic of Uzbekistan or by referendum" [8]. The special provisions include the legal acts, the rules governing certain types of activities established by internal regulations, charters, instructions, etc. of enterprises, institutions and organizations. When applying Article 116 of the Criminal Code, in each particular case, it is necessary to determine exactly what law and (or) item of the subordinate normative legal act are violated.

As a result of the analysis of the title and disposition of Article 116 of the Criminal Code, it can be concluded that it is necessary to violate professional duties in order to refer to "professional duties" and to criminalize the act. Whereas the professional duties can be understood as two or more tasks, the natural question is whether an act can be qualified under this Article if the perpetrator violates one of his or her professional duties and, as a result, the consequences occur.

In particular, according to a social survey among 500 respondents to study the opinion of the investigative staff on this issue, do you think it is advisable to introduce a proposal to change the word "duties" into "duty" of Article 116 of the Criminal Code and as a result 82% of those surveyed said, "Yes, because in the present case several criminal duties are required for criminal

acts. In practice, the violation of one occupation is also qualified by this article. In our opinion, it is advisable to change the phrase “duties” into “duty” of Article 116 and title in order to analyze the results of the inquiry and ensure that the rule of law is accurate and correct.

The social danger of the crime of improper performance of professional duties is manifested in the loss of the interests of the individual, society and the state as a result of the negligent and careless attitude of the perpetrator to his profession and his professional duties. The consequences of legally cognizable medical negligence can broadly be put into three categories: (i) Criminal liability, (ii) monetary liability, and (iii) disciplinary action. Criminal liability can be fastened pursuant to the provisions of the Indian Penal Code, 1860 (“IPC”), which are general in nature and do not provide specifically for “medical negligence.” For instance, Section 304A of IPC³(which deals with the death of a person by any rash or negligent act and leads to imprisonment up to 2 years) is used to deal with both cases of accidents caused due to rash and negligent motor vehicle driving and also medical negligence leading to the death of a patient. Similarly, other general provisions of IPC, such as Section 337 (causing hurt) and 338 (causing grievous hurt), are also often deployed in relation to medical negligence cases [9].

Let’s take a look at the criminal law defining the degree of social danger of this crime. Based on the description of Paragraph 116 of the Criminal Code in accordance with the requirements of Article 15 of the Criminal Code, we can conclude that the offense was negligent at the same time (p. 1 and 2), which did not pose a serious social danger, committing an intentional crime is a grave crime.

The responsibility given in the Criminal Code of the Republic of Uzbekistan for improper performance of their professional duties is determined by the fact that a person who performs certain professional duties must comply with general rules as well as special security requirements related to his/her professional activities.

Professor M.H.Rustambaev writes: “Failure to perform their duties in the profession is an individual’s inability to act within the limits of his or her professional duties and, if possible, inaction. Improper performance of one’s professional duties means that a person does not perform his or her professional duties as required by his or her professional activities.”[10]

In this regard, E.K.Snekosova proposes to introduce such concepts as “professional incompetence” and “dishonesty” (for medical personnel). According to the author, “professional incompetence” means that the level of professional training of the healthcare worker does not conform to the requirements and qualifications for the personnel in this field. Inferiority means non-compliance or improper performance of professional duties as a result of non-compliance with legal requirements, job descriptions, universally recognized medical science rules, medical ethics and deontology requirements.”[11]

Legal scientist V.A.Glushkov commented on this: “The criminal activity in the field of professional activity refers to the interests of citizens in various fields (health, protection, security), and certain types of services to the public, which are the result of improper performance of duties by the employee. The concept of illegal, socially dangerous act committed intentionally or carelessly, which can or may harm the public relations, the health of certain citizens.”[12]

It is noteworthy that the literature has investigated various aspects of medical malpractice among medical personnel [13]. This is primarily due to the fact that in criminal investigations, this crime, especially, is committed by doctors. Thus, according to the cases of 200 criminal cases considered by the courts of the Republic related to article 116 of the Criminal Code of the Republic of Uzbekistan, showed that this crime was committed mainly by doctors (94%). At the same time, the analysis of the materials of these criminal cases is the head of the family polyclinic, chief

physician, head of resuscitation department, obstetrician-gynecologist, physician of resuscitation, anesthesiologist-resuscitator, resuscitator, general practitioner, surgeon. indicating that the unit was committed by a physician. Consequently, the results of the analysis show that in most cases, crimes committed by people who fail to perform their duties professionally are committed by health care providers, and there are few cases of other professions committing this offense [14].

With this regard, the issue of improper performance of duties by physicians should be considered separately. Because the fact that this crime was committed by a physician is characterized by the specifics, which is primarily due to the special nature of the duties the doctor performs. For this reason, when analyzing cases of inadequate medical care by a physician, it is important to distinguish between the complications of caring for their profession and the lack of proper treatment. When a physician suspects that a car accident has occurred due to negligence, the principal task of the investigative and forensic examinations is to determine whether the death or serious bodily injury is directly related to the act or omission of the doctor [15].

Y.D.Sergeev and S.V.Erofeev, legal scholars, argue that “a doctor’s failure to perform his duties in the field of medicine is a violation of his or her professional duties, which may seriously injure the health of some citizens [16]. This definition of medical malpractice is particularly close to the content of the offense and the legal literature. According to the above definition, the authors believe that these crimes may be deliberate and reckless. Investigations and court cases involving crimes committed by doctors against the lives and health of patients show that such acts are often careless.

For example, in 2017 the Kibray district court of Tashkent region considered a criminal case against defendant M. under article 116, part 3 of the Criminal Code. According to case, defendant M. working as deputy Chief Physician and Additional Surgeon Physician of the Kibray district Medical Association of Tashkent region, at 23:50 April 30, 2016, the Kibray District Medical Association received a patient with serious bodily injuries as a result of a traffic accident. As a result of neglect of his profession during surgery, did not detect internal bleeding in the patient and failed to perform his professional duties properly. Failure to provide the patient with blood and blood products resulted in lower blood pressure, health and life risks, and the patient died [17]. In this case, we can see that the defendant was careless about the actions and consequences.

In the light of the foregoing, “failure or improper performance of a professional duty by a defendant” means “the act or omission, in whole or in part, of a person’s negligence in the performance of his or her professional duties. E.K. Snekosova writes about these crimes, such as latency, low level of disclosure, complexity of the subjective nature of the crime, corporate nature, closed medical community, as well as the complexity of handling and investigating these crimes, low level of law enforcement training [18].

The literature also suggests that major health problems are often caused by neglect act of citizens regarding sanitary and hygiene education [19]. At the same time, it should be noted that in some cases, the crime of improper performance of professional duties also stems from the insufficient compliance with sanitary and hygiene requirements. The literature also reveals the subjective causes and conditions of crime (demographic and socio-psychological characteristics of population – their character, age, gender and other characteristics), which motivate, develop and support objective and subjective causes of crime, and the objective causes and conditions of crime (deficiencies in the organization of legal, technical order, etc.).

Criminal conditions are events that give rise to the causes of crime, and the literature suggests that they should be divided into necessary and sufficient conditions at the same time [20]. As a precondition for crimes of improper performance of their duties, we can include the lack of oversight by higher authorities, the inevitability of penalties, the concealment of wrongdoing and other forms of crime. Also, some shortcomings in the current legislation and insufficient legal

regulation of certain social relations also contribute to the crime of improper performance of their duties.

In order to increase the effectiveness of these crimes, E.K.Snekosova recommends that health care providers should be accountable for their non-compliance with safety requirements [21]. In order to more fully address these issues [22], A.G.Blinov added a new chapter in the Criminal Code entitled "Crimes against Patients [23]. Rights and Freedoms" [24] and "Unlawful Provision of Psychiatric Care in Patient Care" [25], "Violation of biomedical research procedures" [26], "Violation of the rules for the use [27]. of assistive reproductive technologies" [28].

Based on the analysis of the above-mentioned scholars' ideas and practical materials, to regulate thoroughly the problem of improper performance of professional duties by an employee and to prevent such errors in future activities: Firstly, the existing criminal legislation defining the liability of medical personnel is to ensure the inevitability of liability for such actions by specifying a specific crime component for the failure or improper performance of the profession by a physician; Secondly, increasing the social protection of healthcare providers; Thirdly, it is necessary to identify and eliminate the gaps in the existing medical regulations.

In many foreign countries, a separate article specifies the liability of physicians for failure or improper performance of their professional duty. The official response was provided by Article 116 of the Criminal Code of the Republic of Uzbekistan for non-registration of crimes committed by them in the course of their professional duties. An analysis of questionnaires and court decisions shows that about 94 percent of cases of improper performance of duties are committed by doctors.

Taking this into consideration, with the purpose of analyzing foreign experience, to identify and prevent mistakes made by doctors and to qualify them in forensic practice, the new Criminal Code of the Republic of Uzbekistan is issued in accordance with Article 116¹ of the following content: It is advisable to fill it with the following. "Article 116¹. Failure or improper performance of a doctor's profession Failure to provide such assistance without proper excuse by a person who is obliged to provide medical care in accordance with the law or special provisions, or causing improperly inflicted serious injury shall be punished with fine from one hundred to two hundred basic calculation value, or deprivation of certain right from one to three years, or compulsory public works from three hundred to three hundred and sixty hours, or correctional labor from two to three years.

The same act that has caused another person to become infected with HIV / AIDS - shall be punished with imprisonment from three to five years or correctional labor from two to three years.

The same act of carelessness: death of a person;

b) caused by two or more persons infected with HIV / AIDS due to failure or improper performance of their profession - shall be punished with imprisonment from two to five years or imprisonment up to five years.

The same act that has resulted in death of people - shall be punished with imprisonment from five to eight years.

Adoption of the draft law will be easier and more effective in the application of criminal law, correct application of criminal and legal norms, improvement of criminal punishment practice, differentiation and individualization of criminal penalties, elimination of competition of norms of the Special Part of the Criminal Code and, finally, increase of criminal law effectiveness.

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